

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13253 of Daniel F. and Georgia Rita Ruskin, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing an addition to a non-conforming structure which now exceeds the lot occupancy requirements (Paragraph 7101.21), from the open court requirements (Sub-section 3306.1 and Paragraph 7107.22), the rear yard requirements (Sub-section 3304.1 and Paragraph 7107.22) and the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7107.23) to construct a second story rear deck to a non-conforming structure now occupied as a flat in an R-4 District at the premises 921 North Carolina Avenue, S.E., (Square 943, Lot 35).

HEARING DATE: July 16, 1980
DECISION DATE: September 3, 1980

FINDINGS OF FACT:

1. The subject property is located on the south side of North Carolina Avenue, S.E., between 9th Street, S.E. and 10th Street, S.E. The property is located in an R-4 District and is known as 921 North Carolina Avenue, S.E.

2. The site is improved with a dwelling which was constructed about 1915. It has three stories at the front and three stories plus basement at the rear. The basement opens onto the rear yard but does not open onto the front. The dwelling is occupied as a two-unit flat, one unit, which is tenant-occupied, being the basement level and part of the first floor, the other unit which is owner-occupied, being part of the first and all of the second and third floors.

3. The dwelling is a non-conforming structure, occupies more than sixty percent of the lot and does not meet the rear yard requirements and the open court requirements for such a dwelling in an R-4 District under the current Zoning Regulations.

4. The site is approximately 870 square feet in area. The rear yard of the property angles away from the dwelling, shortening the distance between the rear of the dwelling and the rear lot line.

5. The applicants seek approval of the construction of a second story rear deck. The deck would be virtually identical in size to an existing first story rear deck. The second story rear deck is slightly larger than the one on the first floor to allow the support columns for the second story deck to pass beyond the outer edge of the first floor deck to the ground.

6. The second story rear deck is almost completely constructed with only the railing to be put in place and some temporary supports to be removed.

7. The deck was constructed without a building permit. The applicants testified that they relied upon the applicants' contractor's representation that no permit was required and upon the real estate broker who had negotiated the sale of the subject property to the applicants in 1977.

8. In June of 1979 construction was started on the subject second floor rear deck. On July 6, 1979 a stop work order was issued since no building permit had been obtained. On July 30, 1979 an application was filed on behalf of the applicants for a building permit. The application stated it was "to replace a former porch at second floor level, previously removed, by a porch of comparable size and construction as the porch presently at first floor of premises." A repair building permit was issued on August 8, 1979. On October 15, 1979 a second stop work order was issued stating that an official surveyor's plat was required to be submitted and an approval by the Zoning Regulations Division of the proposal. On November 30, 1979 the applicants were advised by the Zoning Review Branch that variance approvals were required from the BZA. On March 19, 1980 the applicants were again advised by the Zoning Review Branch that four variances were required for the subject proposed addition. On April 2, 1980 the applicants filed an application at the BZA.

9. The proposed addition will increase the lot occupancy of the subject premises by 4.11 square feet. The subject structure without the proposed addition exceeds the lot occupancy requirements. With the new addition the applicant seeks a 209.81 square feet variance from the lot occupancy requirements, an 11.35 foot variance from the rear yard requirements and a 9.08 foot variance from the open court requirements. In addition the applicant seeks a variance from the prohibition against allowing an addition to a non-conforming structure which now exceeds the lot occupancy requirements.

10. The applicants testified that the only realistic access to the light and air of the outdoors of their property is to the rear yard. The applicants cannot use their front yard for recreation since using the front yard subjects them to noise and remarks from people passing by in automobiles and on foot. They further testified that a deck could not be constructed at the front of the dwelling since the front wall of the applicants' dwelling is on the building line.

11. There is a small balcony at the third floor front of the dwelling on top of the front bay window that is accessible only through the bedroom of the applicants. The balcony is very small and is not large enough to allow two people to sit down at one time. The applicants testified that in addition, using the small balcony for recreation is not suitable because of the aforementioned noise and remarks from people passing by in automobiles and on foot.

12. The applicants have no access to the rear yard through the basement at the rear of the dwelling since this basement is part of the tenants' living quarters.

13. The deck at the first floor in the rear opens off the tenants' living quarters and is accessible only to the tenants.

14. The proposed second-story deck at the rear of the existing building would allow the applicants to enjoy the use of the outdoors at the rear of the building from their living quarters. Without the proposed deck, the applicants would have no access to the light and air at the rear of the building from their living quarters, since only the tenant-occupied flat has such access.

15. There is no visible evidence that a rear second story deck ever existed at this structure or at structures in the same line of houses on North Carolina Avenue prior to the one constructed by the applicants. There is evidence of decks at the third floor level of the said group of houses.

16. The applicants submitted to the record a 1915 building permit which had allowed the construction of a two story back porch virtually identical in horizontal size to the deck constructed by the applicants. The permit gave the permission for the then owner to "Erect one two story back porch five by eight by sixteen foot tin roof - porch not to be enclosed and not within nine inches of the party lines. Cut door leading to porch." The sketch on the permit application shows the "new door" to be "cut" at the second story level, with an existing door on the first story level.

17. There was opposition to the application of record and at the public hearing. There was a petition of some forty signatures in opposition on the grounds that approval of the requested variances would ignore the intent of the Zoning Regulations in limiting the amount of usable space in order to preserve and protect the character and quality of the environment and neighborhood; that the proposed deck would interfere significantly with the enjoyment of the neighboring properties; the present hardship of the applicants was self-induced since the applicants constructed without a permit and that to grant the requested relief might set a precedent.

18. A property owner whose property abuts the southern property line of the subject property opposed the application for the reasons listed in Finding No. 17 above and in addition, that his right of privacy would be violated. Said property owner did testify that the proposed deck would not affect the light and air to his property.

19. The Capitol Hill Restoration Society, by letter of July 15, 1980, opposed the application on the grounds that no exceptional practical difficulty or undue hardship inherent in the property had been established by the applicants and because of the vigorous opposition of the neighbors within 200 feet of the subject property.

20. Advisory Neighborhood Commission - 6B, by letters of July 16, 1980 and July 30, 1980 and by testimony at the public hearing, recommended that the application be approved with two conditions, first, that a privacy opaque screen or fence be built around the addition to give privacy to the applicants and the adjoining neighbors and second, that neither addition, but particularly the first story are not to be enclosed. The ANC further reported that it was their opinion that the applicants acted in good faith and at no time tried to circumvent the requirements of the Government of District of Columbia. The ANC stated that it was of the opinion that the petition in opposition did not truly reflect the proper circumstances when the signers alleged bad faith on the part of the applicants. The Board concurs for reasons stated below except for the conditions imposed by the ANC.

21. The Board had left the record open for the parties to negotiate among themselves to see if they could resolve their differences. The record evidences that no agreement was reached by the parties at the time this application was decided by the Board.

22. The Board is required by statute to give great weight to the issues and concerns of the ANC. The Board concurs with the rationale of the ANC that the applicants did act in good faith and did not intend to circumvent the regulations of the Government of the District of Columbia. The applicants complied with the two stop work Orders issued by the District of Columbia Government. The Board finds that while the applicants were imprudent they were not malicious. As to the conditions imposed by the ANC, the Board notes as to condition one, that the record contains the exchanges of communications between the parties, in an effort to find a mutually acceptable compromise solution for the construction of the proposed deck, all of which ended in a stalemate. As to condition two, the Board finds the possible enclosure of the rear deck on the first floor to be a separate and distinct issue from the subject application, and that no such enclosure is requested or approved herein.

23. In addressing the concerns of the opposition, the Board reiterates that it finds the applicants acted in good faith but not wisely. As to the issue of precedent-setting, the Board has consistently held that it will determine each application on its own merits and that the granting of relief in one situation does not preclude the Board from denying the relief in a second situation. Lastly, the Board does not find that the light and air to the property of the opposition party to the south of the subject site will be adversely affected by the proposed rear deck. As to the said opposition's right of privacy the Board finds that such right does not exist. It is obvious that the properties of the applicant and the opposition by their very physical closeness cannot insure a right of privacy. Both parties freely purchased their properties and should have been aware of their limited horizons. The Board respects the rights of both parties. It cannot, in the subject circumstances, sanction one and deny the other. The Board would have preferred that the conflicts between neighbors would have been resolved amicably.

CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the relief sought are area variances, the granting of which requires a showing of a practical difficulty inherent in the property itself. The Board notes that the subject structure was built prior to May 12, 1958, the effective date of the current Zoning Regulations. It is an existing non-conforming structure that cannot be altered to fit the current Zoning Regulations. The site is 870 square feet in area whereas the current Zoning Regulations would require 1,800 square feet for an R-4 District. There is an unusual configuration of the rear yard. For these reasons, the Board concludes that the practical difficulty is inherent in the property itself. The Board has addressed the concerns of the opposition and the issues and concerns of the ANC. The Board further concludes that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 4-0 (Charles R. Norris, Connie Fortune and Walter B. Lewis to GRANT; William F. McIntosh to GRANT by PROXY; Leonard L. McCants not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER 31 OCT 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.